

Dear FCC, Large right holders involved in the discussions regarding digital rights management schemes have long relied on the assertion that "Without adequate protection, digital media, unlike its analog counterpart, is susceptible to piracy because an unlimited number of high quality copies can be made and distributed in violation of copyright laws." By following this chain of logic, the introduction of new technology requires that additional copy protection schemes be implemented.

This logic is fallacious. First, a distinction between the source medium, the distribution medium, legal copy medium, and the piracy medium must be made. Second, impact of copy protection schemes is not limited to illegal copies but also effects legal activities. This author believes that the introduction of digital technology in the piracy medium is the key driver in enabling violation of copyright laws. Rights holders can not influence the piracy medium by changes to the source, distribution, or legal copy mediums. Further, the author believes the primary motivation of rights holders to enact copy protection schemes in the distribution and legal copy medium is to control legal activities via technical means. Legal activities that will be restricted include First Amendment protected rights and other rights as defined by Supreme Court decisions.

To this end, rights holders are very keen on detecting and publicizing egregious copyright violations in order to justify technical changes to control legal activities. Further this is why, in the face of mounting evidence that these technical measures will not significantly impact egregious copyright violations, the rights holders are still intent on implementing them.

In summary, the author believes that no broadcast flag should be implemented. While rights holders may attempt to withhold content in order force the implementation of a broadcast flag, this is not motivated by piracy concerns but by the desire to extract maximum revenue and profit from legitimate users. Rights holders will seek to prevent users from (or charge them for) engaging in activities that are extremely common and free today such as skipping commercials and time shifting programs. In addition, fundamental First Amendment rights such as the ability to edit media before it is displayed to children will be made impractical by the proposed copy protection scheme. In the absence of additional legal measures, market forces will drive the adoption of DTV without the broadcast flag.